Chong Song @ Chong Sum & Anor v Uma Devi a/p V Kandiah

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO N-02–984 OF 2001
SULAIMAN DAUD, SYED AHMAD HELMY AND MOHAMED APANDI JJCA
22 NOVEMBER 2010

Land Law — Indefeasibility of title and interests — Fraud — Whether proved — Whether bona fide purchasers for value acquired indefeasible title — Whether trial judge erred in holding that standard of proof for fraud in civil cases is on a balance of probabilities

The plaintiff/respondent was at all material times the registered proprietor of a piece of land situated in Johor Bahru ('the land'). On 2 June 1994, the plaintiff/respondent had charged the land to the second defendant as security for a loan in the sum of RM105,000 taken from the second defendant and her husband, the first defendant. Then on 20 October 1994, the respondent granted the second defendant an irrevocable power of attorney ('the PA') empowering her to sell the land and for that purpose sign and execute all transfers and other necessary documents. The third defendant and her husband, the fourth defendant ('the appellants') purchased the land via a sale and purchase agreement ('SPA') executed on 20 April 1996 with the second defendant in her capacity as the donee to the PA given by the plaintiff. The plaintiff/respondent commenced an action against the first and second defendants and the appellants wherein she claimed that the sale and transfer of the land was executed in a fraudulent manner and was not effective in law thereby rendering it null and void. The plaintiff/respondent sought, inter alia, a declaration that she was still the registered proprietor of the land on the grounds that the first and second defendants had through fraud caused her to execute a charge and the PA. The plaintiff/respondent also alleged that the appellants had colluded with the first and second defendants in the sale transaction and transfer of land with the intention of denying the rights of the plaintiff/respondent. The first and second defendants denied the allegations and claims of the respondent while the appellants claimed that they were bona fide purchasers of the land, having paid the purchase price in full, and as such the title as registered in their names was an indefeasible title. The trial judge gave his decision in favour of the respondent. This was the third and fourth defendants'/appellants' appeal against that decision.

Held, allowing the appeal with costs:

(1) It is trite law that the standard of proof for fraud in civil cases is beyond

reasonable doubt. The trial judge had erred when he held that when a plaintiff pleaded fraud, the standard of proof was on a balance of probabilities. Such an error was a serious misdirection that affected the outcome of the case (see paras 12, 14 & 24).

(2) Based on the documentary evidence and the evidence as adduced at the trial, it was found that the sale and transfer of the land by the second defendant chargee and attorney, acting on behalf of the plaintiff/respondent, to the appellants was valid, effective and proper. There was no issue of the memorandum of transfer executed by the second defendant as the donee of an irrevocable power of attorney being insufficient. On the alleged fraud, there was not a shred of evidence to show any evidence of any dishonesty or of any fraudulent act or omission by the third and fourth defendants. Further the facts of the present case did not fall within the exceptional circumstances as envisaged under s 340(2) of the National Land Code. In fact, as innocent purchasers of the land, the appellants were conferred with indefeasible title and interest to the land in dispute (see paras 17–19, 21 & 25).

[Bahasa Malaysia summary

Plaintif/responden pada masa matan merupakan pemilik berdaftar bagi sebidang tanah yang terletak di Johor Bahru ('tanah tersebut'). Pada 2 Jun 1994, plaintif/responden telah menggadai tanah tersebut kepada defendan kedua sebagai jaminan untuk pinjaman berjumlah RM105,000 yang diambil oleh defendan kedua dan suaminya, defendan pertama. Kemudiannya, pada 20 Oktober 1994, plaintif/responden telah memberikan kepada defendan kedua surat kuasa wakil yang tidak boleh batal ('SKW tersebut') yang mana telah memberi kuasa kepadanya untuk menjual tanah dan bagi tujuan itu, menandatangan dan melaksanakan kesemua pindah milik dan dokumen-dokumen penting yang lain. Defendan ketiga dan suaminya, defendan keempat ('perayu-perayu') telah membeli tanah tersebut melalui perjanjian jual beli ('PJB') yang dilaksanakan pada 20 April 1996 bersama defendan kedua dalam kapasitinya sebagai penerima SKW yang diberikan oleh plaintif. Plaintif/responden telah memulakan tindakan terhadap defendan pertama, kedua dan perayu-perayu di mana dia mendakwa bahawa jualan dan pindah milik tanah tersebut telah dilaksanakan dalam cara fraud dan tidak berkuatkuasa di sisi undang-undang yang mana menyebabkannya batal dan tidak sah. Plaintif /responden telah memohon, antara lain, deklarasi bahawa dia masih lagi pemilik berdaftar bagi tanah tersebut atas alasan-alasan bahawa defendan pertama dan kedua dengan fraud telah menyebabkannya untuk menandatangani gadaian dan SKW tersebut. Plaintif/responden juga telah mendakwa bahawa perayu-perayu telah berpakat dengan defendan pertama dan kedua dalam transaksi jualan dan pindah milik tanah tersebut dengan niat untuk menafikan hak-hak plaintif/responden. Defendan pertama dan kedua telah menafikan dakwaan dan tuntutan responden sementara perayu-perayu

A mendakwa bahawa mereka adalah pembeli bona fide tanah tersebut kerana telah membayar harga belian sepenuhnya dan oleh itu geran yang didaftarkan dengan nama mereka adalah hak milik yang tidak boleh disangkal. Hakim bicara telah memberi keputusan bagi pihak responden. Ini merupakan rayuan defendan ketiga dan kedua terhadap keputusan tersebut.

B

Diputuskan, membenarkan rayuan dengan kos:

(1) Adalah menjadi undang-undang tetap bahawa standard pembuktian untuk fraud di dalam kes sivil adalah melampaui keraguan munasabah. Hakim bicara telah khilaf apabila beliau memutuskan bahawa apabila
C plaintif memplid fraud, standard pembuktian adalah berdasarkan imbangan kebarangkalian. Kesilapan sebegini merupakan salah arah yang serius yang mana memberi kesan kepada hasil kes tersebut (lihat perenggan 12, 14 & 24).

D (2) Berdasarkan keterangan dokumentari dan keterangan yang dikemukakan pada perbicaraan, adalah didapati bahawa jualan dan pindah milik tanah tersebut oleh pemegang gadaian dan wakil defendan kedua, yang bertindak bagi pihak plaintif/responden, untuk perayu-perayu adalah sah, efektif dan wajar. Tidak terdapat isu mengenai
E memorandum pindah milik yang dilaksanakan oleh defendan kedua sebagai penerima surat kuasa wakil yang tidak boleh batal adalah tidak mencukupi. Tentang fraud yang didakwa, tidak terdapat sedikit pun keterangan untuk menunjukkan sebarang keterangan mengenai apa-apa ketidakjujuran atau tindakan memfraud atau peninggalan oleh defendan
F ketiga dan keempat. Selanjutnya, fakta-fakta di dalam kes ini tidak termasuk dalam keadaan luar biasa seperti yang digambarkan di bawah s 340(2) Kanun Tanah Negara. Malah, sebagai pembeli tidak bersalah bagi tanah tersebut, perayu-perayu diberikan hak milik yang tidak boleh disangkal dan faedah bagi tanah yang dipertikaikan (lihat perenggan
G 17–19, 21 & 25).]

Notes

For cases on fraud, see 8(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 3067–3105.

H

Cases referred to

Adorna Properties Sdn Bhd v Boonsom Boonyanit @ Sun Yok Eng [2001] 1 MLJ 241, FC (refd)

Chu Choon Moi v Ngan Sew Tin [1986] 1 MLJ 34, SC (refd)

I *Kimlin Housing Development Sdn Bhd (appointed receiver and manager) (in liquidation) v Bank Bumiputra (M) Bhd & Ors* [1997] 2 MLJ 805; [1997] 3 CLJ 274, SC (refd)

M & J Frozen Food Sdn Bhd & Anor v Siland Sdn Bhd & Anor [1994] 1 MLJ 294, SC (refd)

Malayan Banking Bhd v Agencies Services Bureau Sdn Bhd & Ors [1982] 1 MLJ 198, FC (refd)
Melatrans Sdn Bhd v Carah Enterprise Sdn Bhd & Anor [2003] 2 MLJ 193; [2003] 2 AMR 626, FC (refd)
Pekan Nenas Industries Sdn Bhd v Chong Ching Chuen & Ors [1998] 1 MLJ 465, FC (refd)
PJTV Denson (M) Sdn Bhd & Ors v Roxy (Malaysia) Sdn Bhd [1980] 2 MLJ 136, FC (refd)
Saminathan v Pappa [1981] 1 MLJ 121, PC (refd)
Yong Tim v Hoo Kok Chong & Anor [2005] 3 CLJ 229, FC (refd)

Legislation referred to

National Land Code ss 256(2), 340(2), (3), Forms 14A, 16A
Stamp Act 1949 ss 51, 52, 63

Appeal from: Civil Suit No 22–61 of 1996 (High Court, Seremban)

RR Sethu (Cha Kian An with him) (Sebastian Cha & Co) for the appellants.
Sulaiman (R Kengadharan and R Prabhakaran with him) (R Kengadharan & Co) for the respondent.

Mohamed Apandi JCA:

INTRODUCTION

[1] This is a dispute regarding ownership of a piece of land held under HS(M) 11380 MLO 1026 in the Mukim of Sedenak, Kampung Ayer Manis, Daerah Johor Bahru, Johor ('the land'). It is registered under the names of the appellants ('the third and fourth defendants'). The respondent ('the plaintiff') was the original registered proprietor had sued the third and fourth defendants, together with two other defendants ('the first and second defendants') for a declaration that she is still the registered proprietor and pray, for among other things, that the third and fourth defendants return the original title deed to her and that for an order that the sale and transfer of the land was executed in a fraudulent manner and was not effective in law, rendering it null and voild.

[2] After a full trial, the plaintiff's claim was allowed. The third and fourth defendants now appeals to us.

FACTS OF THE CASE

[3] Briefly, the facts are as follows. The plaintiff is the original registered proprietor of the land. The second defendant is the chargee of the land and a

holder of a power of attorney granted by the plaintiff to the second defendant in respect of the land. The first defendant is the husband of the second defendant.

[4] The third and fourth defendants are husband and wife who purchased the land and become the registered proprietors of the land.

[5] The pertinent facts and the relevant chronology of events, as disclosed by documentary evidence are as follows:

(a) The plaintiff charged the land to the second defendant on 2 June 1994. As per Form 16A the charge was created as security for a loan in a sum RM105,000 taken from the second defendant.

(b) A power of attorney granted by plaintiff to the second defendant was dated 20 October 1994. The power of attorney empowered the second defendant to sell the land and for that purpose to sign and execute all transfers and other instruments necessary. The power of attorney is an irrevocable one, given for valuable consideration received in the sum of one hundred thousand ringgit by way of a sale and purchase agreement in respect of the land. The power of attorney was registered with the Kuala Lumpur High Court on 9 November 1994 vide registration No 44243/94, and subsequently registered with the Land Office Johor Bahru on 21 May 1996.

(c) The third and fourth defendants executed a sale and purchase agreement of the land with the donee of the power of attorney (the second defendant) on 20 April 1996.

(d) Form 14A for purposes of transferring the land to the third and fourth defendants, was executed on 25 April 1996.

[6] In her pleadings, the plaintiff averred that on or before May 1994 the first defendant and the second defendant had through misrepresentation, deceit and fraud had caused her to execute a charge and given the power of attorney as the chargor of the land. The plaintiff also averred that it was a friendly loan transaction whereby the plaintiff had borrowed a sum of RM75,000 from the first and second defendants. The plaintiff further averred that she had up to October 1994 paid RM13,125 towards repayment of the loan and had requested for time to pay the outstanding balance.

[7] In respect of the third and fourth defendants, the plaintiff alleged that they are not bona fide purchasers of the land, as they were aware that the land was a charged land and thus could only be transacted in accordance with the provisions of the National Land Code. The plaintiff further alleged that the

third and fourth defendants had colluded with the first and second defendants in the sale transaction and transfer of land with the intention of denying the rights of the plaintiff.

[8] The first and second defendants denied the allegations and claims of the plaintiff. The first and second defendants averred that the land was bought via a sale and purchase agreement dated 30 May 1994 in consideration of a purchase sum of RM100,000 and the said sum was paid in full on the date of execution of the sale and purchase agreement, via Bank of Commerce Cheque No 658002.

[9] The third and fourth defendants also denied any knowledge of all the allegations by plaintiff and averred that they purchased the land via a sale and purchase agreement executed on 20 April1996 with the second defendant in her capacity as the donee to the power of attorney given by the plaintiff. The third and fourth defendants claimed that they have paid the purchase price in full and are bona fide purchasers of the land, and as such the title as registered in their names is an indefeasible title.

[10] The trial at the High Court commenced on 5 September 2000. After hearing the evidence of the plaintiff and five defence witnesses (including two advocate and solicitors who dealt with the execution of the relevant documents pertaining to the transactions leading to eventual registration of the title in the names of the third and fourth defendants), the learned trial judge gave his decision, in favour of the plaintiff, on 17 October 2001.

GROUNDS OF JUDGMENT OF THE HIGH COURT

[11] The learned trial judge wrote his grounds of judgment on 12 February 2006. The learned trial judge had initially correctly identified the core issue of the case, by stating as follows:

> Isu utama yang timbul di dalam kes ini adalah sama ada terdapat salah nyata, tipu muslihat dan fraud yang telah dilakukan oleh defendan pertama dan kedua yang mengakibatkan plaintif telah memberi surat kuasa wakil dan geran asal tanah serta telah menggadaikan tanah tersebut kepada defendan kedua. Jika ada, adakah ia telah dibuktikan?

[12] However, with due respect, the learned judge had misconceived the standard of proof, when he held that when a plaintiff pleaded fraud, the standard of proof is on a balance of probabilities. The learned judge in his grounds of judgment wrote:

A Sememangnya telah menjadi prinsip undang-undang yang mantap bahawa sekiranya plaintif memplidkan fraud, taraf bukti yang diperlukan untuk membuktikannya ialah atas imbangan kebarangkalian. Prinsip ini telah diperkatakan dengan jelas di dalam kes *Adorna Properties Sdn Bhd v Boonsom Boonyanit @ Sun Yok Eng* [2001] 1 MLJ 241 di mana Mahkamah Persekutuan
B memutuskan:

Mahkamah bersetuju dengan Mahkamah Rayuan bahawa taraf bukti yang diperlukan untuk membuktikan pemalsuan dalam kes-kes sivil ialah atas imbangan kebarangkalian.

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[13] As noted in the very quotation from *Adorna Properties Sdn Bhd v Boonsom Boonyanit @ Sun Yok Eng* [2001] 1 MLJ 241, as quoted by the learned trial judge, such standard of proof is in respect of *forgery*. It is a different kettle
D of fish from *fraud*. Despite identifying the core issue of the case, the learned trial judge unfortunately started off on a wrong footing.

[14] It is trite law, that has been held and upheld by the apex courts in this country that the standard of proof for fraud, in civil cases, is beyond reasonable
E doubt. This can be seen in the following cases:

(a) *Saminathan v Pappa* [1981] 1 MLJ 121, when the Federal Court's ruling that in fraud cases, the burden of proof must be proved beyond reasonable doubt was upheld by the Privy Council.

F

(b) *Chu Choon Moi v Ngan Sew Tin* [1986] 1 MLJ 34, where the Supreme Court held that:

> We agree that fraud whether made in civil or criminal proceedings must be
G proved beyond reasonable doubt and cannot be based on suspicion and conjecture (*Narayanan Chettyar v Official Assignee, Rangoon*, *Saminathan v Pappa*). Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The degree of proof need not reach certainty but it must carry a high degree of probability. What it means is that the evidence adduced is such that the court believes its existence or a prudent man
H considers its existence probable in the circumstances of the particular case. If such proof extends only to a possibility but not in the least a probability, then it falls short of proving beyond reasonable doubt.

(c) *Yong Tim v Hoo Kok Chong & Anor* [2005] 3 CLJ 229, where the Federal
I Court while referring to the Privy Council's decision in *Saminathan*'s case at p 235 held that:

> Clearly therefore, the Privy Council has found it fit to follow the *Atkin test* concerning the standard of proof for fraud in civil proceedings in Malaysia.

> In the circumstances, the Court of Appeal in the instant case is misconceived in holding that the proper test to establish fraud is on the balance of probabilities. In our view, the Court of Appeal has obviously misdirected itself in rejecting the proposition of law applied in *Saminathan v Pappa* that the standard of proof for fraud in civil proceedings is one of beyond reasonable doubt which has been consistently applied by the courts in Malaysia. We see no reason to disturb that trend. That being the position, the answer to the first question postulated has to be in the negative.

[15] The Federal Court in *Yong Tim*'s case also took the opportunity to draw the distinction between the standard of proof in 'forgery' and 'fraud' cases. The Federal Court particularly makes references to the infamous *Adorna Properties*'s case. The relevant part of the judgment reads as follows:

> Given the position taken by the Court of Appeal, it is, we think, appropriate to examine in some detail the two cases cited above. In *Adorna Properties Sdn Bhd*, the Federal Court said, inter alia:
>
> For proof of forgery, such as the one under appeal, whether the standard of proof is on a balance of probabilities or beyond reasonable doubt?
>
> The same arguments which the parties had put before both the High court and the Court of Appeal were again argued before us. The High Court held that forgery must be proved beyond reasonable doubt, while the Court of Appeal held that it should be on a balance of probabilities. For the reasons given by the court of Appeal we entirely agree that the standard of proof required to prove 'forgery' in civil cases is one on a balance of probabilities.
>
> It is quite obvious that the Federal Court in *Adorna Properties Sdn Bhd* was concerned with forgery. That was the central issue in dispute between the parties involved. In this regard, the Federal Court adopted the approach taken by the Court of Appeal in the same case as to the requisite standard of proof in establishing forgery. Therein, the Court of Appeal said as follows:
>
> Now, it is a general rule of the common law that, in the absence of a statutory provision to the contrary, proof in civil proceedings of facts amounting to the commission of a crime need only be on a balance of probabilities. The general rule finds expression in the judgment of the High Court of Australia (Barwick CJ, Kitto, Taylor, Menzies JJ in *Rejfek v McElroy* (1965) 112 CLR 517, a case of fraudulent misrepresentation).
>
> The common law of Malaysia has provided an exception to this rule in one case alone. Where fraud is alleged in civil proceedings, it must be proved beyond a reasonable doubt. The exception rests upon the following observation of Lord Atkin in *Narayanan Chettyar v Official Assignees, Rangoon* AIR 1941 PC 93 at p 95:

There are other difficulties in the plaintiffs' way which have been sufficiently considered in the judgments of the High Court. *Fraud of this nature, like any other charge of a criminal offence, whether made in civil or criminal proceedings, must be established beyond reasonable doubt*. The High Court were justified in holding that the trial judge's finding was largely based on suspicion and conjecture. (Emphasis added.)

This passage was applied by Rose CJ in the Singapore High Court in *Nederlandsche Handel-Maatschappij NV (Netherlands Trading Society) v Koh Kim Guan* [1959] MLJ 173 which in turn was applied by the former Federal court in *Tan Chye Chew & Anor v Eastern Mining & Metals Co Ltd* [1965] 1 MLJ 201. It has also been applied by our courts in later cases. See for example, *Tai Lee Finance Co Sdn Bhd v Official Assignee & Ors* [1983] 1 MLJ 81, per Abdul Hamid FCJ (as then was) at p 84.

The Privy Council has recognised the departure made by our common law upon the question of proof of fraud in civil proceedings. In *Saminathan v Pappa* [1981] 1 MLJ 121 at p 126, Lord Diplock when delivering the advice of the board said that.

The onus of proof of fraud in Malaysia is proof beyond reasonable doubt.

The Court of Appeal went on the state that the *Atkin test* established in *Narayanan Chettyar* was not followed by the High Court of Australia in *Rejfek v McElroy*. It then made the observation that proof of forgery in civil proceedings, unlike fraud, came within the general rule ie that it need only be established on a balance of probabilities. This observation, as we have said earlier, was accepted by the Federal Court in *Adorna Properties Sdn Bhd*. Clearly, fraud was not the issue before the Federal Court in that case. Where fraud has been raised, we agree with the Court of Appeal in *Adorna Properties Sdn Bhd*, that the Malaysian courts have consistently applied the *Atkin test*.

[16] The learned trial judge in this case, also held that the transfer of title of the land to the third and fourth defendants was not legal as the instrument used was insufficient. This is one of the circumstances that make the title defeasible under s 340(2) of the National Land Code. Besides the purported reliance on the cases of *Kimlin Housing Development Sdn Bhd (appointed receiver and manager) (in liquidation) v Bank Bumiputra (M) Bhd & Ors* [1997] 2 MLJ 805; [1997] 3 CLJ 274 and *M & J Frozen Food Sdn Bhd & Anor v Siland Sdn Bhd & Anor* [1994] 1 MLJ 294, the learned trial judge did not elaborate as to why the registration of the title to the third and fourth defendants were unlawfully acquired. The learned judge also make an issue over the alleged late payment of stamp duty on the power of attorney and the sale and purchase agreement between the plaintiff and the first defendant. The learned judge also held that in view of the existence of a charge on the land, it gave rise to suspicion on the transparency of the transaction and went on to conclude that the third and

fourth defendants are not bona fide purchasers of the land.

OUR FINDINGS

[17] Upon perusal of the evidence adduced at the trial, namely vide oral and documentary evidence and upon hearing submissions by both counsel, we make the following findings.

[18] The sale and transfer of the land to the third and fourth defendants can be validly executed by the first defendant in her capacity as on attorney acting on behalf of the chargor, plaintiff. The fact that the power of attorney was duly and voluntarily executed by the plaintiff is not in dispute. This was even admitted by the plaintiff in her testimony at the trial. The sale and transfer of the land by the chargee and attorney, to the third and fourth defendants was valid, effective and proper. The facts in this case is almost similar to the case of *Melatrans Sdn Bhd v Carah Enterprise Sdn Bhd & Anor* [2003] 2 MLJ 193; [2003] 2 AMR 626, where the Federal Court, inter alia, held that:

> We agree with *Kimlin* that Part XVI of the NLC deals with the rights and remedies of parties under a statutory charge over land. Section 256(2) of the NLC provides:
>
> Any application for an order for sale, under this Chapter by a *charge* of any such land or lease shall be made to the court in accordance … (Emphasis added.)
>
> Clearly, the section provides a prescribed method of sale to be undertaken by a chargee not a chargor. In the instant appeal, however, the sale was undertaken by the R & M on behalf of the first respondent, the chargor of the said lease. In our view, the provisions of NLC prescribing for judicial sale could not apply to the facts in the instant appeal because the R & M was acting as agent of the chargor.

[19] There is no issue of void or insufficient instrument as the memorandum of transfer was executed by the first defendant as the donee of an irrevocable power of attorney. The power of attorney do contained the empowering clause, that reads:

> 9. To sell to any person all or any of my lands, leases and charges and movable property whether now belonging to me or which shall hereinafter belong to me and for that purpose to sign and execute all transfers and other instruments necessary.

[20] That the late payment of stamp duty on the power of attorney and the sale and purchase agreement between the plaintiff and the first defendant does not affect the validity and admissibility of the documents. This is covered by ss 51, 52 and 63 of the Stamp Act 1949. On this point it is suffice to refer to the case of *Malayan Banking Bhd v Agencies Services Bureau Sdn Bhd & Ors* [1982] 1 MLJ 198.

[21] On alleged fraud, there is not an iota of evidence to show any inkling of fraudulent act or omission by the third and fourth defendants. They are innocent purchasers of the land. In any event, mere knowledge of the existence of a charge could not reasonably be inferred as part of a fraudulent act. See *Pekan Nenas Industries Sdn Bhd v Chong Ching Chuen & Ors* [1998] 1 MLJ 465, where the Federal Court at p 529, held that:

> In *Waimiha Sawmilling*'s case (at p 106), the judicial committee of the Privy Council adopted the words of the New Zealand Court of Appeal in *Fels v Knowles* (1906) 26 NZLR 604 at p 620 where it said:
>
> Everything which can be registered gives, in absence of fraud, an indefeasible title to the estate or interest or in the cases which registration of a right is authorised, as in the case of easements or incorporeal rights, to the right registered.
>
> We would, therefore, answer the question posed under question (1) by saying that mere knowledge of the existence of an unregistered claim or interest in land may not amount to fraud unless it is demonstrated that there has been a deliberate and dishonest attempt to deprive the unregistered claimant of his claim or interest therein (see *Loke Yew v Port Swettenham Rubber Company, Limited* [1913] AC 491 (PC).

[22] At the trial in the High Court, two advocates and solicitors, namely SP3 and SP4 gave evidence for the defendants and confirmed the execution of the relevant documents pertaining to the transactions over the land and the consequential transfer of the land to the third and fourth defendants.

[23] The evidence at the trial clearly showed that the facts does not fall within the exceptional circumstances as envisaged under s 340(2) of the National Land Code. On the other hand, in any event, the third and fourth defendants' acquisition of the title and interest on the land is well protected by the proviso to s 340(3) of the National Land Code. The third and fourth defendants are purchasers in good faith and for valuable consideration of which such consideration has been paid in full. In short, the third and fourth defendants, had in law, upon being registered as proprietors, acquired an indefeasible title and interest to the land.

CONCLUSION

[24] From the above findings, we conclude that the learned trial judge has erred when he made his decision by using the wrong standard of proof in the factual matrix of the case when fraud was specifically pleaded. Such an error is a serious misdirection that affects the outcome of the case. Furthermore, from our scrutiny of the evidence as adduced at the trial, the documentary and oral evidence are all in favour of the third and fourth defendants.

[25] As stated earlier, on the facts and by operation of law, the third and fourth defendants are conferred with indefeasible title and interest to the land in dispute. There is not a shred of evidence to show otherwise. There is no evidence to indicate any element of dishonesty or willful act on the part of the third and fourth defendants that can paint a picture of any sort of fraudulent act that could be illustrative of fraud as observed by Raja Azlan Shah CJ (as HRH then was) in the Federal Court case of *PJTV Denson (M) Sdn Bhd & Ors v Roxy (Malaysia) Sdn Bhd* [1980] 2 MLJ 136.

[26] As a parting note and capitulation, it may be appropriate to state the law on the subject matter and also to touch briefly on the burden of proof. Such note, can no better be expressed then as stated by the then Lord President, Tun Suffian in *Saminathan v Pappa* who had this to say (at p 122):

> Now as to the law, it is clear from s 340 of the National Land Code that the plaintiff's title to the land in dispute is indefeasible, but it may be defeated in case of fraud or misrepresentation to which she was a party or where registration was obtained by means of an insufficient or void instrument.
>
> And at p 123:
>
> As the plaintiff's name is on the register and the defendant wanted it removed, in my judgment the burden is on the defendant to prove fraud or misrepresentation to which the plaintiff was a party, or that the registration of the plaintiff as proprietor was obtained by means of an insufficient and void instrument.
>
> As regards fraud, the defendant must prove it not on a balance of probabilities but *beyond reasonable doubt*: see the Privy Council case of *Narayanan*.

[27] In such circumstance, without any hesitation, we are unanimous in our decision to allow the appeal. The appeal is allowed with costs. The orders of the High Court is hereby set aside, and consequential to that the names of the third and fourth defendants are to be restored as the registered proprietors of the land. Costs is fixed at RM12,000 and the appeal deposit is to be refunded to the third and fourth defendants.

Appeal allowed with costs.

Reported by Kohila Nesan